

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH BARNETTE  
MOVANT,

**FILED**

**OCT 29 2007**

V.

CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLV. CASE NO. #98-00005-001-ERIE

UNITED STATES OF AMERICA  
RESPONDENT.

MOTION UNDER TITLE 18 U.S.C. § 3582(c)(2) AND TITLE 18 U.S.C. § 3553(a), AND OF THE UNITED STATES SENTENCING GUIDELINES § 1B1.10(c) AND § 1B1.11(a), FOR THE REDUCTION OF SENTENCE BASED ON GUIDELINE AMENDMENT 9, EFFECTIVE NOVEMBER 1, 2007, CONCERNING THE REDUCTION OF TWO BASE OFFENSE LEVELS, FOR (CRACK) COCAINE AMENDMENT 9.

COMES NOW, Movant, Joseph Barnette, prose, files this Motion under Haines v. Kerner, 404 U.S. 519, Movant Barnette, request that this Motion be construed liberally by the Court because he is a layman of the law without the legal education of the judicial workings of the law.

Movant Barnette, respectfully request that this Honorable Court modify the Movant's sentence base offense level of 36, to a base offense level 34, category III, from 235-293 months to base offense level 34, 188-235 months, pursuant to the November 1, 2007, (Crack) Cocaine Amendment 9, which is retroactive according to United States Sentencing Guideline § 1B1.10(c). Movant Barnette, states also that the (Crack) Cocaine Amendment of November 1, 2007, can be classified by the Honorable Court as a "clarifying" amendment that must be applied retroactively, even if not listed in the

1B1.10(c) United States Sentencing Guideline Amendment Section. See United States v. Capers, 61 F.3d at 1109, (key number 19). The United States District Court can give retroactive effect to a "clarifying" (as opposed to substantive) amendment regardless of whether it is listed in United States Sentencing Guideline 1B1.10. See, United States v. Ofchinick, 877 F.2d 251, 257 N.9 (3rd. Cir. 1989)(amendment intended to clarify the meaning of an existing guideline may be given substantial weight in determining the meaning of the existing guideline). This rule also applies when a reviewing Court is confronted with a postsentencing clarifying amendment. See, United States v. Fant, 974 F.2d 559, 564 (4th Cir. 1992). See also, United States v. Anderton, 136 F.3d 747, 751 (11th Cir 1998).

Movant Joseph Barnette, was sentenced on February 9, 1999, based on a trial conviction, on counts 1,2, and 3, having to do with (Crack) Cocaine.

Movant Barnette, has accomplished the following achievements while striving to better himself while incarcerated. The programs that he has taken advantage of are as follows:

- (1). Rpp1 Aids and Disease prevention;
- (2). VT Computer Applications;
- (3). Calisthenics;
- (4). VT Building Trades;
- (5). Intermediate GED;
- (6). Glover GED LV.2, M-F;
- (7). (Macon, GED level 2);
- (8). GED/c;
- (9). GED Tutoring 2;
- (10). Band;
- (11). Running a Car Dealership;
- (12). Parenting 2;
- (13). Residential/Commerical RL Esta.

See all accomplishments attached as Exhibit "A". Movant Barnette, has accomplished these extraordinary achievements because his

intentions are to become a productive and positive member of society upon his release from prison. according to Title 18 U.S.C. § 3553(a) factors, Movant Barnette, informs the Honorable Court of his positive progress, with a request that he be sentenced to the low end of 188 months, base offense level 34, category III. Movant Barnette, at this moment continues to take full advantage of all of the necessary programs available to him.


Movant Barnette, request re-sentencing from the Honorable Court in person according to United States Sentencing Guideline § 1B1.11(a), to allow him to argue any other appropriate changes in the Guidelines of his sentence since the date of his last sentence, particularly his Title 18 U.S.C. § 3553(a) achievements. Movant Barnette, request that he be returned to the United States District Court in the Western District of Pennsylvania for re-sentencing at the discretion of the Honorable Court.

CONCLUSION

Movant Barnette, hopes and prays that the Honorable Court for the Western District of Pennsylvania grant him this two level reduction, due to the November 1, 2007, (Crack) Cocaine Amendment.

Dated:

Respectfully submitted,

s/   
Joseph Barnette #10733-068  
United States Penitentiary  
P.O. Box 150160  
Atlanta, GA 30315

CERTIFICATE OF SERVICE

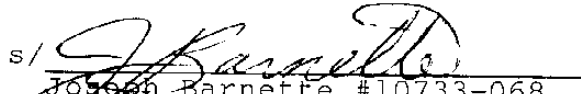
I, Joseph Barnette, do hereby certify that I have this same day served the opposing party to this action with a true and correct copy of the attached pleading in case number 98-00005-001-ERIE, by mailing the same to them in the U.S. Mailing Service with adequate pre-paid postage attached and addressed as follows:

Assistant United States Attorney  
John J. Tracilla  
100 State Street, Suite 302  
Erie, PA 16507

Clerk of the Court  
United States District Court  
For the Western District of Pennsylvania  
P.O. Box 1820  
Erie, PA 16507

The Honorable Sean J. McLaughlin  
United States District Court  
Judge, for the Western District  
of Erie Pennsylvania  
Erie, PA 16507

Done this 31 day of October, 2007.

s/   
Joseph Barnette #10733-068  
United States Penitentiary  
P.O. Box 150160  
Atlanta, GA 30315

E X H I B I T "A"

ALL CERTIFICATES

E X H I B I T "A"

ALL CERTIFICATES

ATLAK \*  
PAGE 001 OF 001 \*

INMATE EDUCATION DATA  
TRANSCRIPT

\* 10 09 2007  
\* 15:17:02

REGISTER NO: 10733-068  
FORMAT: TRANSCRIPT

NAME: BARNETTE  
RSP OF: ATL-ATLANTA USP

FUNC: PRT

----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
ATL	ESL HAS	ENGLISH PROFICIENT	06-07-2000 1341	CURRENT
ATL	GED HAS	COMPLETED GED OR HS DIPLOMA	09-15-2004 1322	CURRENT

----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
ATL	ABDOMINAL EXERCISE PROGRAM	07-18-2007	09-22-2007	P	C	P	36
ATL	NATIONAL FIT PHY TRAIN	04-24-2007	07-14-2007	P	C	P	10
ATL	RPPI AIDS & DISEASE PREVENTION	05-28-2006	05-31-2006	P	C	P	1
THA	VT COMPUTER APPLICATIONS 2-330	10-21-2005	04-12-2006	P	C	C	360
THA	CALISTHENICS	08-15-2004	02-15-2005	P	C	P	40
THA	VT BUILDING TRADES 0745-1030	10-12-2004	03-07-2005	P	C	C	500
THA	INTERMEDIATE GED 0900-1030	03-31-2003	11-21-2003	P	W	I	98
BUT GP	GLOVER GED LV.2,M-F, 1230-230	08-23-2002	09-30-2002	P	W	I	68
BUT GP	(MACON, GED LEVEL 2,12:30)	02-22-2002	08-01-2002	P	W	I	360
CUM	GED/C 1230	07-28-2000	10-05-2001	P	W	I	114
CUM	GED TUTORING 2	01-12-2001	03-23-2001	P	C	P	30
CUM	BAND	01-04-2001	01-04-2001	P	C	P	1
CUM	RUNNING A CAR DEALERSHIP	10-11-2000	12-17-2000	P	C	P	20
CUM	PARENTING 2	10-02-2000	12-19-2000	P	C	P	30
CUM	RESIDENTIAL/COMMERCIAL RL ESTA	10-02-2000	12-15-2000	P	C	P	25

----- HIGH TEST SCORES -----

TEST	SURTEST	SCORE	TEST DATE	TEST FACL	FORM	STATE
ABLE	LANGUAGE	6.0	10-30-2001	BUT	F	
	NUMBER OPR	13.0	10-30-2001	BUT	F	
	PROB SOLV	11.9	10-29-2001	BUT	F	
	READ COMP	13.0	10-29-2001	BUT	F	
	SPELLING	8.6	10-30-2001	BUT	F	
	VOCABULARY	9.3	03-10-2003	THA	E	

G0000

TRANSACTION SUCCESSFULLY COMPLETED